IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

Crl.MC.No. 3026 of 2003()

PETITIONER:

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1. V.PREMARAJAN,
   COMMITTEE MEMBER, MUKKOM SERVICE CO-OP.BANK LTD.
   NO.1211, MUKKOM, KOZHIKODE.

2. M.K.MUSTHAFFA,
   COMMITTEE MEMBER, MUKKOM SERVICE CO-OP. BANK LTD.
   NO.1241, MUKKOM, KOZHIKODE.

3. K.KAMALAKSHY,
   SECRETARY, MUKKOM SERVICE CO-OP. BANK LTD.,
   MUKKOM, KOZHIKODE.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS:

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1. M.J.GEORGE, S/O. JOSEPH,
   MADATHIL HOUSE, MUKKOM P.O.,
   THAZHEKODE AMSOM DESOM, KOZHIKODE.

2. S.I. OF POLICE,
   MUKKOM POLICE STATION.

3. STATE, REP. BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.P.P.JACOB
R2 & 3 BY P.P. SRI K.C.SANTHOSHKUMSR.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P. 3717/2003 IN CRL.M.C 3026/2003

DISMISSED.

9-8-2007. SD/- V.K.MOHANAN, JUDGE.

//TRUE COPY//.

V.K.MOHANAN, J.

CRL.M.C. 3026 OF 2003

Dated this the 9th day of August 2007

ORDER

The above Crl.M.C is filed by the accused in crime No.68/2003 of the Mukkon police station for the offences punishable under sections 408, 409, 468, 467, 471, 120B read with 34 of the I.P.C, with a prayer to quash Annexure I complaint and Annexure II FIR. Annexure I complaint is filed by the Ist respondent herein before the Judicial Magistrate, First Class- II, Thamarassery which was forwarded to the 2nd respondent by the learned Magistrate under section 156(3) of the Cr.P.C. and accordingly, the above crime was registered, consequently the investigation was started.

2. I have heard the counsel for the petitioners as well as learned Public Prosecutor.

3. The short facts of the case is following as: The Ist and 2nd petitioners are the committee members of Mukkom Service Co-operative bank Ltd., and the 3rd petitioner is its Secretary. The bank had initiated proceedings against one

P.H.Devassia who was working as the Chief Accountant in the said bank. On the basis of the enquiry conducted by the Sub committee in which petitioners 1 and 2 are members, they came into the conclusion that the said employee was guilty and finally, punishment was imposed against the delinquent by reverting him to the post of senior clerk from the post of Chief Accountant. Challenging the above decision of the bank and the disciplinary proceedings , the delinquent filed a petition under Rule 176 of the Kerala Cooperative Societies Rules 1969 to rescind the proceedings of the Sub committee. The employee had already approached this court by filing a writ petition and this Court had issued a direction directing the Joint Registrar, Kozhikode to dispose of the petition. Subsequently, the Joint Registrar issued a direction to reinstate the said employee in service and the order of reversion was set aside. The said order of the Joint Registrar is dated 21-11-2002. According to the petitioners, the employee did not report for duty in pursuance of the order of the Joint Registrar, and

therefore, the Sub committee has decided to terminate his service and accordingly they have published notice in the newspaper and also by forwarding registered notice showing his termination as per the order dated 14-11-2002.

4. According to the complainant, after the order passed by the Joint Registrar allowing the employee to continue as Chief Accountant, all the petitioners, with a view to throw away him from the service of the bank and with the intention of causing damage and injury to his reputation and for the said purpose, the petitioners have created forged documents and used the forged documents, in order to achieve their ulterior motive and all these are done in pursuance to a conspiracy in which the above two petitioners were parties.

5. From the above facts it can be seen that serious dispute is pending between the petitioners and the said employee of the above mentioned bank and at the instance of the Joint Registrar of the Co-operative societies, the bank has been directed to reinstate the

employee in service from the post which he was holding at the time of initiating disciplinary proceedings.

6. In annexure I complaint, the main allegation contained in paragraph 9 of the complaint which read as follows:

> ” On receipt of the order of the Joint Registrar dated 21-11-2002 allowing the employee Devassia to continue as Chief Accountant in the Bank, all accused joined together dishonestly and fraudulently made and executed document in the form of notice dated 14-11-2002 and issued to employee Devassia with intention of causing damage and injury leading to the condonation (?) of the service from the bank with knowledge that such a notice should not have been created at a time when an order dated 21-11-2002 was received from the Joint Registrar with direction to allow Devassia to continue as Chief Accountant in the Bank having dominion over the letter pad of the co-operative bank a body corporate and legal entity as per law by dishonestly misappropriated and convert it to the use of the accused having dominion over the letter

pad and postal slip in violation and direction of law to which these documents are to be used and used it as genuine knowing that it is forged and falsely ordered and used the same for terminating the service of the employee Devessia intending that the forged document is being used for the purpose of cheating with knowledge that the forged document will cause harm and injury to the reputation of Devassia by committing criminal conspiracy in respect of the creation of the forged documents misusing their official capacity and thereby all accused have committed offences punishable u/s. 408, 409, 465, 468, 471 and 120 read with section 34 of IPC. All accused have joined together and created forged document and used it for terminating the service of P.J.Devassia and published it in newspaper to cause harm and injury to the reputation of the employee by conducting criminal conspiracy and hence all accused are jointly liable and responsible for the offences alleged. All accused are liable to be published (?) as per law".

7. The learned counsel appearing for the petitioners

submitted that the order of the Joint Registrar is dated 21-11-2002 and if that be so, how the notice dated 14-11-2002 can be forged so as to circumvent the order of the Joint Registrar. According to the counsel for the petitioners, the order of the Joint Registrar dated 21-11-2002 directing to reinstate Devassia as Chief Accountant has received in the bank only on 25-11-2002. It is further submitted that the documents alleged to have been forged by the petitioners on 14-11-2002 asking Devassia to come and report for duty on the strength of the above figures regarding the dates, the counsel submits that the allegation raised in the complaint is false which cannot be accepted since it is practically impossible to create documents on 14-11-2002 anticipating the order of the Joint Registrar dated 21-11-2002. It is also stated in the above Crl.M.C. that civil proceedings are going on against the order of the Joint Registrar. Those factual position are yet to be ascertained through the investigation which authorised to the police under section 156(3) of Cr.P.C.

8. I have gone through the materials available on record and especially, the allegations contained in annexure-I complaint as well as the materials and Annexure II FIR. The arguments put forward by the counsel appearing for the petitioners are not sustainable in view of the fact that the entire facts involved in the case is being investigated by 2nd respondent, and only on a completion of the investigation, it can be ascertained whether any offence stand or not as alleged in the complaint. At this stage, this Court is not in a position to hold that no offence will lie against the petitioners, especially in the light of paragraph 9 of the complaint.

9. It is to be noted that there is no material before this court to know whether the investigation is completed or not and what are the materials so far they have collected during the investigation. I am sure that the police will consider all the materials which will be made available to them for analysis during the investigation so as to assist them to come into a conclusion whether the offences as alleged in Annexure I complaint is

established or not. Therefore, there is no basis for the apprehension for the petitioners that their version will not be considered by the police. Of course, the petitioners will get opportunity to explain and convince the police regarding their position during the time of investigation.

In the above circumstances, I am of the opinion that there is no merit in the Crl.M.C and the same is liable to be dismissed and accordingly, the above crl.M.C. is dismissed.

V.K.MOHANAN, JUDGE.

Kvm/

V.K.MOHANAN, J.

CRL.M.C. No.3026 OF 2003

Order

Dated 9-8-2007: